CHOW DIH

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
CHAO HICK TIN JC
[MAGISTRATE'S APPEAL NO. 451 OF 1985]
2 FEBRUARY 1990

CRIMINAL PROCEDURE: *Appeal against conviction and sentence of appellant under s. 420 of the Penal Code - Whether charges defective - Section 393 of Criminal Procedure Code - Whether error occasioned failure of justice.*

This is an appeal against an order for conviction of 6 amended charges of cheating under s. 420 of the Penal Code. The appellant was convicted of cheating 6 patients of specified sums of money over different periods by deceiving them into believing that they were suffering from various serious diseases which need further treatment from him, hence more sums of money were paid by them to him. He was sentenced to a term of imprisonment of 1 year for each of the charges. In accordance with s. 18 of the Criminal Procedure Code, two of the sentences were ordered to run consecutively while the remaining sentences were ordered to run concurrently. The appellant appeals against both conviction and sentence.

The appellants Counsel submitted that the convictions were bad and wrong in law for the following reasons:

(i) The sums stated in each charge failed to take into account the amount which was rightfully due to the appellant in respect of the treatment properly given to each patient and which had nothing to do with any deception particularly with regard to the first visit of the patient.

(ii) In respect of some of the charges, there was no evidence to show that the deception was the effective cause why the patients kept returning to the appellant to receive treatment, on the contrary, the evidence showed that notwithstanding the deception, each patient was treated for his actual ailment(s) which was the real reason why he or she returned to the appellant for treatment.

Held:

[1] The fact that if there was no deception, the patients would have to pay something less than the amount actually paid for consultation and treatment for which he or they came to seek from the appellant was irrelevant. The entire amount was tainted with deception and a conviction based on the full amount paid to the appellant is not bad in law.

[2] In any event, the error relating to the sums involved is inconsequential and the convictions recorded should not be set-aside in view of the provisions in s. 396 of the Criminal Procedure Code. There was no failure of justice as the appellant knew fully well the charges he had to meet.

[3] In view of all the circumstances, the sentences are deemed not to be manifestly excessive.

[Appeal dismissed.]

Cases referred to:
Yoong Hock Pin v. PP [1977] 1 MLJ 178
Quah Ching Lim v. R [1956] MLJ 54
Wee Toon Boon v. PP [1976] 1 MLJ 191
Pie bin Chin v. PP [1985] 1 MLJ 234
P.E. Billinghurst v. Emperor [1924] AIR Cal 18
PP v. Ginder Singh [1948] 14 MLJ 194
Salleh v. R [1908] 10 SSLR 27
Khoo Kay Jin v. PP [1964] 30 MLJ 22
R v. Clucas [1949] 2 KB 226
R v. Lince [1873] 12 Cox 451
R v. Barrick [1985] 3 Cr App R(S) 142

Legislation referred to:
Criminal Procedure Code [Sing], ss.18, 129, 153, 256, 396, 422
Penal Code [Sing], s. 420

Other source referred to:
Russell on Crime (12th Edn.), p. 1186
Gour's Penal Code of India (10th Edn.), Vol. 4, p. 3648

For the appellant - Peter Yap
For the respondent - Jennifer Marie

JUDGMENT

Chao Hick Tin JC:

The appellant was tried before the Senior District Judge and convicted of six amended charges of cheating under s. 420 of the Penal Code. The charges alleged that the appellant had cheated six patients of specified sums of money over different periods, by deceiving them into believing that they were suffering from various serious diseases and needed follow-up treatment and had thereby dishonestly induced them to continue to receive treatment from him and in respect of which varying sums of money were paid by them to him. He was sentenced to a term of imprisonment of one year for each of the charges and as required by s. 18 of the Criminal Procedure Code (CPC), two of the sentences were ordered to run consecutively. The other sentences were to be served concurrently with the said two sentences. The appellant has appealed against both conviction and sentence.

I do not propose to set out all the six amended charges on which the appellant was convicted but only the first two which should be adequate to show the sort of charges that were preferred against him:

> You, Dr. Chow Dih
>
> are charged that you, between 14 June 1983 and 22 July 1983, at 56, Blk 32, Cassia Crescent, Singapore, cheated a patient one Koh Teow Hock by deceiving him into believing that he had a "growth of calcium" in one of the organs in his abdomen and that as such he would need follow-up treatment and you thereby dishonestly induced him to receive treatment from you and to deliver property to you of the following amounts on the respective dates:
>
> 14 June 1983 - $80
> 15 June 1983 - $150
> 16 June 1983 - $23
> 17 June 1983 - $23
> 18 June 1983 - $33

14 July 1983 - $115
16 July 1983 - $35
18 July 1983 - $35
20 July 1983 - $35
22 July 1983 - $45

which sum amounted altogether to $574 which he would not have done had he not been so deceived, and you have thereby committed an offence punishable under s. 420 of the Penal Code, Chapter 103.

You, Dr. Chow Dih

are charged that you, between 30 July 1983 and 20 August 1983, at 56, Blk 32, Cassia Crescent, Singapore, cheated one Mdm Teo Guek Eng by deceiving her into believing that her daughter namely Chan Yin Ling was suffering from a kidney disease and that the said Chan Yin Ling would require daily treatment for two weeks and you thereby dishonestly induced the said Mdm Teo Guek Eng to cause her daughter to receive treatment from you and to deliver property to you of the following amounts on the respective dates:

30 July 1983 - $ 90
1 August 1983 - $150
2 August 1983 - $ 22
3 August 1983 - $ 24
4 August 1983 - $ 22
16 August 1983 - $ 22
17 August 1983 - $ 22
18 August 1983 - $ 32
19 August 1983 - $ 22
20 August 1983 - $ 41

which sum amounted altogether to $447 which she would not have done had she not been so deceived, and you have thereby committed an offence punishable under s. 420 of the Penal Code, Chapter 103.

The other four charges are very much along similar lines, except that the patients, the deceptions, the periods and sums involved are different.

For the purposes of this appeal, Counsel for the appellant has not argued that the findings of the trial Judge that the appellant had practised the various deceptions on the patients were erroneous. He has conceded that point. Indeed, I do not see how the appellant could possibly challenge those findings as the trial Judge has in a very careful and detailed grounds of decision, which runs into some 295 pages, analysed the evidence before coming to his decision. The appellant's Counsel has, however, submitted that the convictions are bad and wrong in law for two main reasons:

(i) the sum stated in each charge failed to take into account the amount which was rightfully due to the appellant in respect of the treatment properly given to each patient and which had nothing to do with any deception, particularly with regard to the first visit of the patient.

(ii) in respect of some of the charges, there was no evidence to show that the deception was the effective cause why the patients kept returning to the appellant to receive treatment; on the contrary, the evidence showed that, notwithstanding the deception, each patient was treated for his actual ailment(s) which was the real reason why he or she returned to the appellant for treatment.

As the first submission raises a general point of law, I think I should deal with it forthwith. As I understand it, the submission is this. There was, particularly in respect of the first occasion when each patient went to see the appellant, a certain amount of fee that was lawfully due from that patient to the appellant for consultation and treatment for the ailment for which the patient came to see the appellant in the first place. The deception could only have provided a basis for the appellant to charge more and to ensure that the patient would return treatment. By not deducting such amount which was lawfully due to the appellant from the amount actually paid by each patient to the appellant, the charge is accordingly bad in law. Counsel for the appellant went on to submit that if the charges on which the appellant has been convicted are bad, an appellate Court is not competent to amend the charges under s. 256 of the Criminal Procedure Code (CPC) and the appellant should be acquitted. On this point he relied on *Yoong Hock Pin v. PP* [1977] 1 MLJ 178, *Quah Ching Lim v. R* [1956] MLJ 54 and *Wee Toon Boon v. PP* [1976] 1 MLJ 191.

The deputy public prosecutor's answer to this submission is briefly as follows. Firstly, the amount paid on each occasion by the patient was the amount demanded by the appellant following the deception. Further, through the deception the appellant made each patient to return to him for consultation. It was not necessary for the prosecution to separate each payment into two components, the legitimate portion and the illegitimate portion. Secondly, and in the alteration, even if some part of the fee paid on the first visit, or on the subsequent visits, was for legitimate consultation and medication and should be deducted from the amount stated in the amended charges, this is clearly an error and an irregularity falling within s. 396 of the Criminal Procedure Code and should be cured. There has not been any failure of justice as the appellant knew precisely what he had to meet.

At the outset, I must observe that in a case such as this, neither the patient nor the prosecution would be able to specify what was the correct amount that was legitimately due to the appellant and which had nothing to do with the deception unless the doctor himself gave a detailed breakdown of the fee demanded by and paid to him. Indeed the appellant is the best person to know what was the extra fee he charged on account of the deception. It would appear that in respect of the six patients who were deceived they were not told of the breakdown of each sum demanded by the appellant. The various amounts paid by the patients (or a parent of a patient) were never disputed by the appellant at the trial. This point was also never canvassed by the defence before the trial Judge: thus it was not specifically dealt with in the grounds of decision. If this submission is correct then it would mean that a doctor who practised deception like the appellant could not be charged for cheating because the prosecution would never be able to prove what was the illegitimate portion of the fee demanded unless the doctor gave a breakdown to the patient when payment was made. In my view, this submission cannot be correct. Take for example the first charge where Koh Teow Hock (PW8) paid to the appellant $80 on 14 June 1983. It appears to me obvious that the appellant could not have legitimately charged and the patient would not have paid him $80 but for the deception. The fact that if there were no deception PW8 would have to pay something less than $80 (perhaps substantially less) for consultation and treatment for which he came to seek from the appellant is beside the point. The $80 was paid because that was the sum demanded and paid following the deception. The entire amount was tainted by the deception. In my opinion a conviction based on the full amount paid on each visit to the appellant is not bad in law.

In any event, even if I were wrong to have so held, I am of the view, and here I accept the submission of the DPP, that the error relating to the sums involved is inconsequential and the conviction recorded should not be set aside in view of the provisions in s. 396 of the CPC which read as follows:

> Subject to the provisions hereinbefore contained, no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of:
>
> (a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;
>
> (b) the want of any sanction required by s. 129; or
>
> (c) the improper admission or rejection of any evidence,
>
> unless the error, omission, improper admission or rejection of evidence, irregularity or want has occasioned a failure of justice.

There is no suggestion that the Court whose judgment is now under appeal is not a Court of competent jurisdiction. The second matter which I have to consider before applying this provision is whether the error has occasioned a failure of justice. If the appellant was prejudiced in his defence by the error, that would be an indication that there was such a failure (see *Pie Bin Chin v. PP* [1985] 1 MLJ 234).

In *P.E. Billinghurst v. Emperor* [1924] AIR Cal 18 where the charge under s. 420 of the Penal Code made no mention of the person cheated, the Court held that such a failure was not fatal to the case as the accused was not misled by the omission. The Court said at p. 41:

> We are of opinion, however, that the omission should not be regarded as a fatal defect in the charge, in as much as the accused were not misled and there was no failure of justice by reason of the omission of the above-named particulars from the charge.

An instructive local case is *PP v. Ginder Singh* [1948] 14 MLJ 194 and all I need do is to quote the following passage of the judgment at p. 196:

> The first point concerns the charge, and quite clearly the charge in wrong. Apart from the omission to state the place of the offence (s. 153 of the Criminal Procedure Code) it alleges the carrying of goods, weighing 161 cwts, 195 lbs in excess of the authorized weight of 135 cwts. Obviously the intention was to charge an excess of some 26 cwts. The poundage defeated me; the petition refers to 195 lbs; the charge to 105 lbs; and Mr. Olver's subtraction (WP2) gives 135 lbs. I should state, as regards the charge, that it does not appear to have misled the defendant-respondent, and I think it could be cured by virtue of s. 422 (now s. 396) of the Criminal Procedure Code.

In *Salleh v. R* [1908] 10 SSLR 27, it was held that in determining whether any error had occasioned a failure of justice, the Court was entitled to take into consideration the fact whether the objection could and should have been raised at an earlier stage of the proceedings.

As far as I can see the appellant knew well the charges he had to meet. Not only have I been unable to see any prejudice to appellant, but for the reasons alluded to before, the appellant is the only person who would know for sure what portion of the fee paid by each patient on each visit was on account of his deception.

Charge No. 1

I will now proceed to deal with the submission of the appellant under each charge. The evidence on this charge was that Koh Teow Hock (PW8) first came to see the appellant on 14 June 1983 because he "felt tired all over (his) body." The appellant was recommended by a friend of PW8. The appellant used the stethoscope to examine PW8's chest and back. Then he told PW8 that the latter had to undergo a scan. PW8 saw a blurred image on a TV-like screen which the appellant said was a "growth stuck to one of the organs" somewhere on the right side of the body just above the right hip, which PW8 understood to be the spleen. The appellant said the growth caused the tiredness and that PW8 had to get injection and medication to treat the growth and get rid of the tiredness. PW8 was told that it could take a long time, though the appellant did not say how long. He was also told to return to the appellant for injection every day. Before the scan, a urine test was also done on PW8. On that visit PW8 was given an injection and a day's dosage of tablets. On the second visit the next day he was given a blood test. He was also given an injection and some medicine. On the following visits he was given on each occasion an injection and some medicine. On 14 July 1983, a second scan was done and PW8 was told that there was slight improvement in his condition and henceforth to return on alternate days. 22 July 1983 was the last time PW8 went to see the appellant.

PW8 testified that when the appellant told him that he had a growth, he believed the appellant. As a result, PW8 "felt some fright." A week later the appellant even revealed to Ong Meng Keng (PW9), the friend of PW8, of what the appellant told PW8 about calcification in PW8's body.

The appellant's defence that he never represented to PW8 that the latter had a calcium growth in his body and that he never directed PW8 to see the appellant daily thereafter was rejected by the trial Judge.

The main point raised by Counsel in this appeal is that the prosecution has not proved that all the monies paid by PW8 referred to in charge were for the purported treatment of the growth of the calcium. Counsel argued that even if it were true that the appellant did falsely represent to PW8 that he had a growth of calcium but if the evidence showed that some of the monies paid were for treatment properly administered to PW8 then the charge is not proven and cannot stand. Counsel submitted that the trial Judge did accept that PW8 was treated for his actual ailments. In any event, in respect of the payment of $80 on the first visit on 14 June 1983 the entire payment could not be a wrongful gain to the appellant as he did not ask PW8 to come to see him; the appellant would properly be entitled to some fee for consultation, the scan and the urine test.

Secondly, Counsel submitted that the evidence showed that the deception did not have any real effect on PW8 who was more concerned with his tiredness. His tiredness was the real reason why PW8 continued to see the appellant and not any misrepresentation made by the appellant.

On the first submission I do not think there is anything more I could usefully add to what I have already said above on this point.

On the second submission, that the deception was not the effective cause, Counsel relied on the following question and answer in the re-examination of PW8:

> Q: If you had known that there was no calcium in your spleen, would you have sought daily treatment from him?

A: I felt tiredness all over my body. There was no improvement and so I stopped going from seeing him.

This answer was of course not on point. But when the question was repeated to PW8, he answered:

A: No. Then I would not be feeling unwell. I would not then see him. I thought the calcium in my spleen caused the tiredness because that is what he told me. I believed him.

Counsel further relied on *Khoo Kay Jin v. PP* [1964] 30 MLJ which held that deception is only one element of the offence of cheating. There can be no cheating unless by reason of the deception the person deceived is induced to part with any property or to do or omit to do anything which he would not do or omit to do but for the deception.

I do not think *Khoo Kay Jin* is of much assistance; the facts are different. Firstly, in *Khoo Kay Jin* the charge did not specify the deception. Secondly, it concerned the giving of post-dated cheques (on 18 August 1962) a few days after the goods had been delivered (on 15 August 1962) and on this Hepworth J said at p. 23:

A post-dated cheque in payment of goods already received is a mere promise to pay on a future date and broken promise is not a criminal offence, though it may amount in certain business relations to discreditable behaviour.

It was argued in *Khoo Kay Jin* that the complainant had been deceived into accepting those post-dated cheques because he believed they would be honoured; he would not have accepted them if he knew they would be dishonoured. He had, therefore, suffered damage because he had thereby foregone his right immediately to institute civil proceedings. Hepworth J responded to this argument in these terms:

The answer to this argument is in my view that the damage spoken of must be the proximate result of that complained of. If it is a mere possibility and not a necessary consequence of the act an essential element of the offence of cheating is not satisfied.

Another case relied upon by Counsel is *R v. Clucas* [1949] 2 KB 226, where the accused and another induced bookmakers to bet with them by representing that they were commission agents acting on behalf of a large number of workmen who were placing small bets on various races when in fact they were making bets in considerable sums of money for themselves alone. The bookmaker make payment on the winning horse. Goddard CJ on behalf of a full bench of the Court of Criminal appeal, after observing that the accused and the other person thoroughly dishonest people, said:

In the opinion of the Court it is impossible to say that there was an obtaining of the money by false pretenses which were alleged because the money was obtained not by reason of the fact that the people falsely pretended that they were somebody else or acting in some capacity which they were not; it was obtained because they backed a winning horse and the bookmaker paid because the horse had won. No doubt the bookmaker might never have opened an account with these men if he had known the true facts, but we must distinguish in this case between one contributing cause and the effective cause which led the bookmaker to pay the money.

The last case cited by Counsel and which I would like to refer to is the unreported case of *R v. Lewis*, which is mentioned in *Russell on Crime* (12th Edition) at p. 1186.

There a school-mistress had obtained her appointment by falsely stating that she possessed a teacher's certificate. The Court held that she was not guilty of obtaining her month's salary by false pretences on the ground that she was paid because of the services she rendered and not because of the falsehood.

Each of these cases was decided on its own facts. But it seems to me that the correct principle of law is set out in *Russell on Crime* (12th Edn.), at p. 1184:

> It is necessary for the prosecution to establish that it was by some of the false pretences laid in the indictment that the goods were obtained ... if the position was that the prosecutor (i.e., victim) at the time when he transferred the goods, was influenced by the false pretence and would not have transferred them but for his reliance upon it, then **it is immaterial that he may have had additional reasons** for making the transfer (Emphasis mine).

In *R. v. Lince* [1873] 12 Cox 451 it was decided that the fact that the false pretence was not the only reason why the victim parted with his property was quite immaterial. Bovill CJ said at p.453:

> The second point reserved was whether a charge of obtaining goods by false pretences can be sustained when the prosecutor admits that another circumstance influenced his mind in parting with his goods, as well as the alleged false pretence. It has long been settled that it is immaterial that the prosecutor was influenced by other circumstances than the false pretence charged. If that were not so, an indictment for false pretences could scarcely ever be maintained, as a tradesman is generally more or less influenced by the profit he expects to make upon the transaction.

R.v. Lince is cited in *Gour's Penal Code of India* (10th Edn.), Vol 4, at p. 3648 as representing good law. The authors further at p. 3690 state the following:

> To attract the application of s. 420, however, it is not necessary that the representations made by the accused should be the sole cause of the damage or loss. It is sufficient if the complainant was partly and materially, though not entirely, influenced by the false pretences of the accused.

Reverting to the present charge, the trial Judge found that PW8 accepted what the appellant said about calcification and accepted whatever treatment was administered to him by the appellant and promptly paid for each treatment under the belief that all that was aimed at treating the growth, and that in turn would alleviate the tiredness that was afflicting PW8. After reviewing the evidence, the trial Judge came to the conclusion that:

> ... as far as PW8 was concerned he had been induced to believe that the treatment he was receiving all along was in relation to the 'growth of calcium' in one of his organs with the consequent elimination of his 'aches and weakness.' Although in the course of his visits to the appellant clinic he may have been treated for other conditions described by the appellant, what was always foremost in his mind, through its promotion by the appellant, was that he was being treated for his 'aches and weaknesses.'

In my view there is ample evidence to show that the deception did have a real effect on PW8 who returned daily to seek treatment from the appellant and paid for the fees demanded by the appellant. While it might be true that PW8's main concern was his tiredness, the fact remains that the appellant did deceive PW8 into believing that the tiredness was because of the "growth". He did ask PW8 to return for treatment daily. Putting it at the lowest, the case falls within the principle established in *R v. Lince.*

Charge No. 2

The evidence was that on 30 July 1983 Mdm Teo Guek Eng (PW4) brought her daughter Chan Yin Ling (PW5) to see the appellant. PW4 told the appellant that PW5 had pains on the joints and had been treated by a Chinese physician, who told her that PW5's kidneys were weak. PW4 also informed the appellant that she found some white sediments in the urine sample of PW5. Using the ultra-sound machine, the appellant did a scan of PW5's kidneys. Based on one of the images that appeared on the screen the appellant told PW4

that it showed a kidney with a protrusion. The appellant said that that kidney was "no good". On enquiry by PW4, the appellant advised that the kidney could be cured. He told PW4 that she was to bring PW5 to him for an injection every day for two weeks to ensure a speedy recovery. On that day the appellant also carried out a urine test on PW5. PW4 complied with that advice and brought PW5 to the appellant for the next two weeks.

PW4 did not make a request for the scan. The appellant suggested it and PW4 did not object. The present charge related to ten visits by PW5 to the appellant. The last visit was on 20 August 1983. Thereafter on a relative's recommendation, PW4 brought PW5 to see a specialist. PW4 had then also heard from another patient who said that a taxi-driver had remarked that the appellant was a cheat.

On 24 August 1983 PW4 brought PW5 to see Dr. Gardon Ku at Mount Elizabeth Hospital. After examination and tests Dr. Ku advised PW4 that PW5 did not have any kidney trouble. He also said her urine was clear.

Counsel submitted that the appellant did not dishonestly induce PW5 to undergo the scanning procedure on 30 July 1983; that the sum for the scanning was properly incurred. Alternatively he submitted that as the appellant had in fact treated PW5 for her true ailment as diagnosed by him, irrespective of whether or not PW4 and/or PW5 had any such knowledge, there was no wrongful loss or wrongful gain.

It is true that when the appellant told PW4 and PW5 that he would do the scan, no deception had yet been uttered. But whether the scan was at all necessary and was properly undertaken must be looked at in the light of all the circumstances. PW4 and PW5 are lay people who believed that PW5 might have kidney trouble. Thus they came to consult the appellant. But surely before the appellant did a scan he must be satisfied through clinical examination that such a scan was necessary. After reviewing the evidence, the trial Judge found that the appellant had no good reason to order a scan. I cannot see any ground to disapprove of that finding. Accordingly, it could not be said that the fee for the scan was properly due to the appellant. In any event, even if what Counsel submitted is correct, that some fee was properly due for the scan, the total amount paid by PW4 on the first visit would have included a portion which was due to the deception. That being the case, and for the reasons I gave above, the entire amount of the fee paid on 30 July 1983 was tainted. As for the subsequent visits even though the appellant might have treated PW5 for her actual ailment, the fact remains that PW4 and PW5 returned to the appellant because of the deception. The fact-situation here is quite different from that in *R v. Clucas* and *R v. Lewis*.

Charge No. 3

On 13 July 1983, Wong Sheue Ling (PW7) was brought by her mother, Madam Loy Boon Siew, (PW6), to see the appellant because PW7 had blood in her motion and also pain in her stomach. Then using the ultra-sound machine on the abdomen of PW7 the appellant said that there was a growth in the large intestine of PW7 and that it was serious. PW6 believed him. He told PW6 that PW7 had to return to his clinic for injection and medicine for two weeks. On the visit of 19 July 1983, following a second scan, the appellant told PW6 that the growth was still there. PW6 suggested that perhaps PW7 should have an X-ray done. The appellant gave a letter of referral to PW6. On 21 July 1983, PW6 brought PW7 to the American Hospital for that purpose. A barium enema test was carried out at the hospital. PW6 brought the X-ray film and the radiologist's report to the appellant who after seeing them told PW6 that there was no growth in the large intestine of PW7. PW6 was angry and asked why the appellant in the beginning said there was a growth. In reply, the appellant

denied that he ever told PW6 that PW7 had such a growth. Notwithstanding this deception PW6 continued to bring PW7 to the appellant for a period of almost one month from 22 July to 19 August 1983 in regard to PW7's original ailment. PW6 stopped bringing PW7 to the appellant after 19 August 1983 because PW7's condition did not improve. She had also heard remarks from others that the appellant was a cheat.

The submission of Counsel on this charge is that the alleged deception, i.e., growth in the large intestine, had little or no effect on PW6; otherwise why did PW6 continue to bring PW7 to see the appellant after the deception was exposed? That goes to show that the "alleged deception was not foremost in the mind of PW6." After all the appellant did treat PW7 for her blood-in-motion and stomach pain condition.

I should mention that at the trial itself Counsel for the appellant had also made a similar point, i.e., that if, in fact, PW6 felt cheated by the appellant, she would not have calmly put the matter aside and continued to bring PW7 to see the appellant for PW7's original ailment.

Having reviewed the evidence, I am unable to accept the submission that the deception had little or no effect on PW6. She was informed specifically by the appellant to attend daily at his clinic with PW7 for injection and medicine in relation to the growth in the large intestine. PW6 complied with that advice. The Senior District Judge dealt with this very point as follows (pp. 92-94 of the grounds of decision):

> The fact that she had dutifully attended daily at the accused's clinic, with PW7, for the treatment of the latter by the appellant, was in the main motivated by the expectation that the appellant could do something about the "growth" in the first instance and, consequently, about the rest of the ailments of PW7. In fact, when the appellant prescribed tablets for PW7 on the first day i.e., on 13 July 1983, after having impressed PW6 about the existence of the "growth", the appellant had informed her (PW6) that the tablets were for the "growth" in question and also to stop the bleeding which came about when PW7 moved her bowels (*vide*: p. 265, notes of evidence). Furthermore, what was also significant was that the dosage of tablets prescribed for PW7 by the appellant on each visit was sufficient for only a day. The question that instantly arose was that if such tablets were necessary for treating PW7 why then was it at all necessary for PW7 to return daily to the appellant's clinic (to receive the daily dosage) when a course of such tablets to last say, 5 or 6 days at a time, could instead have been prescribed, obviating any necessity for the daily attendances? Even if the reason for this procedure was that it was necessary because PW7 had to receive daily injections as well, it still did not explain the need for a daily dosage of the tablets in question. The tablets could still have been prescribed in a course for a period. Similarly, the evidence of Dr. Teh (PW17) with regard to the medication and injections prescribed as outlined in the appellant's case sheet on PW7, Exhibit P. 221, was that the injections of Bactrium administered by the appellant to PW7 on certain days were unnecessary in view of the prescription of Bactrium tablets that PW7 took on those same days (*vide*: p. 758, notes of evidence). From all these circumstances, there were no doubts in my mind that both PW6 and PW7 were indeed telling the truth when they stated that the appellant had specifically told them that for PW7 to be treated for her "growth" she had to come to see him at his clinic daily for two weeks for injections and medication, which in fact they did until 20 July 1983 (in respect of the 'growth').

I am also unable to accept the submission that the Senior District Judge did not give sufficient consideration to the fact that PW6 kept sending her daughter (PW7) back to the appellant for treatment on the original ailments (blood-in-stool and abdominal pain) even after 21 July 1983. The Senior District Judge clearly had this aspect in mind but he was not persuaded by that fact. Instead, he was of the view that the subsequent visits should not "detract from the weight to be attached to (PW6's) allegation of what she claimed the appellant had represented to her about the 'growth' on her first visit to his clinic." He explained:

> This is because her subsequent visits did not include treatment of any "growth" in PW7 but was continued for the specified purpose of having the other ailments of PW7, namely, the blood in her stools and the abdominal pains, which still persisted to be attended to.

It is important to understand this part of the evidence of PW6. She put it this way:

> I felt the appellant was contradicting himself. At that moment I was angry. So as far as this matter concerning the growth is concerned, I put it aside.

The Senior District Judge found as a fact that the appellant did misrepresent to PW6 and PW7 regarding the growth and because of this deception they returned to obtain treatment for the growth until 20 July 1983. Visits, subsequent to 20 July 1983, made by PW6 and PW7 were not included in the charge. The fact that PW6 had (notwithstanding her anger at that moment) reacted more kindly and with less hostility towards the appellant, to the extent that she was prepared to forget about the past, does not necessarily mean that the deception did not have any real effect on her. We are here dealing with a lay person who seems to have an abiding trust in doctors. PW6 would appear to be one of those people who, notwithstanding an earlier disappointment, would prefer to stick by a doctor rather than consulting another.

Finally the point was made that the trial Judge had erroneously held that the appellant "had deliberately given (PW7) a medication that would worsen the (stool condition)." This point was considered by the Senior District Judge at pp. 226-232 of his grounds of decision. PW7 had a condition of blood-in-stool and her stools were pellet-like. Yet the appellant said that he was informed by PW6 that PW7 had diarrhoea, which the appellant diagnosed to be "amoebic dysentery". The trial Judge did not believe the appellant that the appellant was informed that PW7 had diarrhoea and held that he must have known of PW7's primary complaint i.e., constipated stools. To the extent that the trial Judge seems to think that Immodium (a drug to control diarrhoea) was prescribed by the appellant prior to 21 July 1983 that appears to be wrong: see Exh. P211. Immodium was only prescribed on 21 July 1983 and subsequently. But I do not think this error materially affects the other findings of the trial Judge. However, the trial Judge was right to observe that even after the radiologist report from the American Hospital showed that PW7 had a "large amount of faecal residue", the appellant prescribed Immodium.

Charge No. 4

On this charge, the deception which was alleged against the appellant was that he told the patient Madam Chua Chay Chim (PW10) that she was suffering from kidney trouble. On 25 July 1983 PW10 went to see the appellant because her right leg, near the ankle, was swollen. She also informed him that some elderly, but lay people, had advised her that she might be suffering from some kidney disease. The appellant gave her an ultra-sound scan.Then the appellant told her that one of her kidneys was big and the other small and that she had kidney trouble. On being asked for a cure, the appellant told PW10 that if she wanted a fast cure she should see him daily for three weeks, which she did. On the third visit on 27 July 1983, the appellant examined PW10's vagina. She did not ask him why, thinking he was a doctor and knew what he was doing. Neither did he inform her. But PW10 thought it might be related to her kidneys; after all she had not gone to see the appellant for any other ailment. The appellant told her that her uterus was dirty and needed toilet. On subsequent visits she was given vaginal toilet and treated for an ailment related to her cervix. A cauterisation of the cervix and a polypectomy were also performed. But PW10 was never told what those treatments were all about.

PW10 stopped seeing the appellant after 20 August 1983 as she lost faith in him; the swelling on the ankle had still not subsided even though the appellant said it would be healed in 3 weeks' time. PW10 said she believed the appellant when he told her that she had kidney trouble. She elaborated:

> I thought that the swelling in my ankle was caused by my kidney problem and that is why I returned daily to receive treatment for this problem of mine.

PW10 admitted that it would be difficult for her to do the vaginal toilet herself; as she had to return daily to the clinic, it would be convenient for the appellant and his nurse to do that for her. But all that was pursuant to the appellant's initial advice to her that she should see him daily for three weeks because of the alleged kidney trouble.

Counsel's first point is that a substantial part of the fee which PW10 paid on the first visit was lawfully due to the appellant; further in respect of the subsequent visits for which treatment was given relating to her cervix, proper deduction should be allowed in respect thereof. He also contended that the treatment which the appellant gave relating to the cervix had nothing to do with the deception.

Now PW10 clearly stated that she thought the examination of her vagina and subsequent treatment of it related to the alleged kidney trouble. The trial Judge's finding on this is as follows:

> I was aware that the appellant did actually treat PW10 for an ailment relating to her cervix. However, the manner by which PW10 was induced to subject herself for the treatment of that ailment was, in my view, dishonest. She was never told that the treatment that was being administered to her had nothing to do with the swelling of her ankle nor with any kidney trouble, but rather was led to believe that it was.

After reviewing the defence put up by the appellant, the trial Judge concluded:

> I was satisfied that the accused had so acted with the clear knowledge that PW10 would believe when he had represented to her, which she did, and thereafter he had purported to treat her for the 'kidney trouble' when in fact he was treating her for cervicitis and erosion, for which she had not come to see him about in the first place. In the circumstances, it was my view that even if his treatment of PW10, during the material period, for something other than 'kidney trouble' was borne out medically, it was irrelevant in so far as a defence to the prosecution's case on the present charge is concerned. The fact of the matter was that PW10 was deceived into believing what he had told her about her swellings and while acting under such a belief, had been dishonestly induced into parting with her monies (totalling $652) to the accused.

I am satisfied that the initial deception created by the appellant had caused PW10 to return for further treatment and also to allow treatment to be carried out in relation to her vagina. All the payments which she made to the appellant were affected by the deception. The fact that the appellant had actually treated her for her cervicitis does not render what he did any less culpable. There is no basis for me to disturb the conviction recorded by the trial Judge.

Charges No. 5 and 6

These two charges concerned one Siow Lye Kwee (PW2) and his wife Madam Tjhiu Tjoen Mie (PW3) who went to the appellant's clinic to check for the presence of sugar in their urine. They gave a specimen of their urine to the nurse. They were subsequently called into the consultation room to see the appellant, who greeted them in the most extraordinary manner: "Wah, Wah, you are a very sick person and both of you are suffering different

sicknesses". The appellant further said that PW2's urine showed a lot of blood and PW3's urine showed a lot of pus. He told them that PW2's case could be "kidney trouble" and PW3's case could be "uterus trouble". Both were asked to go through a blood test. They were also asked to return the next day which they did.

Counsel's main point is that PW2 and PW3 went on their own accord to see the appellant to have their urine tested. The appellant did carry out a urine test on them. Assuming that the appellant did deceive them by making them believe that they were very sick persons and on that pretext carried out a blood test, the fact remains that the appellant did render them services i.e., urine test, for which he was entitled to some fee. That amount should have been deducted in formulating the charge.

This submission is similar to those made earlier on the other charges and for the reasons which I have already dealt with, I do not think there is any merit in it.

Appeal Dismissed

In the light of the foregoing the appeal against conviction must be dismissed. I turn next to deal with the question of sentence. The appellant was sentenced to a term of imprisonment of 12 months for each charge and as required by s. 18 of the Civil Procedure Code two of the sentences were ordered to be served consecutively.

For this Court to interfere with the sentence imposed by the Court below, it must be shown that the sentence passed is manifestly excessive. The offence under s. 420 of the Penal Code carries a maximum sentence of seven years imprisonment plus fine. Counsel for the appellant has not submitted that the Court below has either committed an error of principle or taken into account irrelevant considerations.

I have given this matter the most anxious consideration as it involves a member of one of the noble professions. The charges relate to six patients and they stretched over a period of more than three months; it is not just an isolated instance of indiscretion. What seems to me clear is that by the use of the ultra-sound scanning machine the appellant had proceeded systematically to defraud those patients by falsely and dishonestly representing to them that they had a particular disease (e.g., kidney trouble; growth in the large intestines) which they in fact did not have. The machine was obviously his tool to impress and convince the patients that what he said was true. Taking advantage of their ignorance and trust the appellant made them attend at his clinic regularly. The motive of the appellant was obviously to ensure that these people became regular patients so that he could earn fees from them; that was what the trial Judge found. These patients trusted him and did not suspect anything was awry. He had no regard whatsoever for the fears and anxieties which his dishonest representations had caused to his patients. He had no qualms in creating misery for them. He has abused a position of trust. Such conduct cannot be tolerated without the public's confidence in the medical profession being undermined. What he has done is mean and despicable. He has brought shame to the profession which has always been held in high esteem by the public.

I appreciate that following this case, the appellant will be dealt with professionally by the Medical Council. But a doctor who cheats his patients, like the appellant, must expect to be dealt with according to law as well as the disciplinary rules of his profession. I am unable to accept this as a mitigating factor. In *R v. Barrick* [1985] 3 Cr App R(S) 142 the Court indicated that professional men should expect to be punished as severely as others, in some case more severely.

I note that the sums involved in all the six charges totalled only about $2,500. But having considered all the circumstances, while I think that the sentence imposed by the Senior District Judge is stern, and stern it should be to register society's reproach, I am not persuaded that it is manifestly excessive. Accordingly, the appeal against sentence is also dismissed.

Lest it be misunderstood, I would like to stress that this is not a case of a doctor who made a *bona fide* mistake in diagnosis. This Court recognises that doctors, like any one else, could make mistakes in their professional practice. I need hardly say that a mistake made in good faith is no crime. Whether there will be civil liability for such a mistake is a separate matter altogether. I am not concerned with that at this time. But here I am not dealing with a case of judgmental errors made in good faith but deliberate fraud in making representations to patients knowing fully well that those representations were false. There seems to be a certain pattern about it. The Senior District Judge has, in his very detailed grounds of decision, carefully examined the evidence and found that the appellant had perpetrated fraud.

Also found at [1990] 1 CLJ 845